



**International covenant
on civil and political
rights**

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HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March - 4 April 2008

VIEWS

Communication No. 1488/2006

<u>Submitted by:</u>	Mr. Miroslav Süsser (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	The Czech Republic
<u>Date of communication:</u>	30 June 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 7 August 2006 (not issued in document form)
<u>Date of adoption of Views:</u>	25 March 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Discrimination on the basis of citizenship with respect to restitution of property

Procedural issue: Abuse of the right of submission

Substantive issues: Equality before the law; equal protection of the law

Article of the Covenant: 26

Article of the Optional Protocol: 3

On 25 March 2008, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1488/2006.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-second session

concerning

Communication No. 1488/2006*

<u>Submitted by:</u>	Mr. Miroslav Süsser (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	The Czech Republic
<u>Date of communication:</u>	30 June 2006 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 March 2008,

Having concluded its consideration of communication No. 1488/2006, submitted to the Human Rights Committee by Mr. Miroslav Süsser under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication (dated 30 June and 2 July 2006) is Mr. Miroslav Süsser, a naturalized American citizen currently residing in the United States of America and born on 14 May 1934 in Prague. He claims to be a victim of a violation by the Czech Republic of article 26 of the International Covenant on Civil and Political Rights. He is not represented by counsel.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

1.2 The Optional Protocol to the International Covenant on Civil and Political Rights (Optional Protocol) entered into force for the Czech Republic on 22 February 1993.

Facts as presented by the author

2.1 The author's mother owned an apartment building no. 67, and a parcel of land and garden in Michle, a community which is part of the city of Prague. On 21 December 1962, the mother transferred the building and land under pressure to the Czechoslovak State. The author's father owned one half of the buildings no.67, 68 and 69, and three land parcels in the cadastral territory of Soběslav. The other half belonged to the author's father's brother, Rudolf Süßer.

2.2 The author escaped to the US on 6 October 1969 and subsequently obtained US citizenship. His mother died on 8 August 1978, his father died on 23 January 1987. The author and his sister Jiřina Hrbatová are the only surviving heirs.

2.3 With regard to the properties in Prague, Czechoslovak Law 119/1990 cancelled all transfers which had been made under pressure. The author filed a suit against the City of Prague and against his sister because the City of Prague awarded the building in its entirety to her. On 20 March 1996, the Regional Court for Prague rejected the author's claim because he had become a US citizen. Indeed, according to the Czechoslovak law 87/1991, the author did not meet the continuous nationality criterion and restitution was denied. The author appealed. On 18 April 1997, the Court of Appeal/City Court rejected the appeal on the same ground that the author was a foreign citizen. The author made an "extraordinary appeal" to the Supreme Court. This appeal was rejected on 30 November 1998.

2.4 The author initiated proceedings with the Constitutional Court which decided on 18 May 1999 that the decision of the Court of Appeal/City Court of 18 April 1997 and the decision of the Regional Court for Prague of 20 March 1996 should both be cancelled. The case was sent back to the Regional Court for Prague which decided on 8 June 2000 that the defendant Jiřina Hrbatová had to cede to the author half of the building, half of the parcel of land and half of the garden within fifteen days. On 15 March 2001, the Court of Appeal/City Court cancelled the decision of the Regional Court and sent back the case to the Regional Court.

2.5 On 30 October 2001, the Regional Court decided that its previous decision should be annulled. Upon investigation by the Department of Citizenship, Ministry of the Interior, which notified the Court by letter of 21 August 2001, it appeared that the author was a Czechoslovak and Czech citizen until 10 December 1984 and that on 11 December 1984, he obtained US citizenship and thus lost his Czechoslovak and Czech citizenship under the Treaty of Naturalization entered into by the former Czechoslovak Republic and the United States of America in 1928 (the Treaty of Naturalization). The Regional Court concluded that the author could not be entitled to restitution.

2.6 With regard to the properties in Soběslav, upon the author's father death in 1987, the one half of the properties that belonged to him was transferred to the author's sister. The author stated that he was "bypassed" because he had become a US citizen. The author brought a claim to the District Court in Tábor which rejected it on 31 December 1997 because he was not a Czech citizen. The author appealed to the Regional Court in České Budějovice which confirmed

the decision of the District Court on 6 November 1998 based on the provisions of Act No. 87/1991. The author went to the Constitutional Court which rejected his case on 10 April 2001.

2.7 The same matter has been considered by the European Court of Human Rights (case no.71546/01) which found on 16 October 2002 that the facts did not reveal any violation of the provisions of the European Convention. The Czech Republic has not entered a reservation to article 5(2)(a) of the Optional Protocol.

The complaint

3. The author claims to be a victim of a violation of article 26 of the Covenant, as the citizenship requirement of the Act No. 87/1991 constitutes unlawful discrimination.

The State party's observations on the admissibility and merits of the communication

4.1 By *note verbale* of 7 February 2007, the State party made its submission on the admissibility and merits of the communication. It challenged the admissibility of the communication on the ground that it constitutes an abuse of the right of submission of communications within the meaning of article 3 of the Optional Protocol. It invokes the Committee's jurisprudence, in particular in *Gobin v. Mauritius*.¹ In the present case, the State party argues that the author petitioned the Committee in July 2006, 3 years and 9 months after the decision of the European Court of Human Rights of 3 October 2002, without offering any explanation for this time lapse.

4.2 The State party recalls that the author, as well as other persons requesting property restitution, could have applied to the Czech national authorities for citizenship in 1990 and 1991 and that they stood a realistic chance of acquiring this citizenship and thereby meeting the conditions set forth in Act No. 87/1991. By failing to apply for Czech citizenship during this period, the author deprived himself of the opportunity to meet the Restitution Act's requirements in good time.

4.3 The State party further refers to its earlier submissions in similar cases, and indicates that its restitution laws, including Act No. 87/1991, were part of two-fold efforts: to mitigate the consequences of injustices committed during the Communist rule, on one hand, and to carry out speedily a comprehensive economic reform with a view to introducing a well-functioning market economy, on the other. Since it was not possible to redress all injustices committed earlier, the restrictive preconditions were put in place, including that of citizenship, which was envisaged to ensure that due professional diligence would be devoted to returned property. According to the State party, the citizenship requirement has always been considered as in conformity with the Czech Republic's constitutional order by the Constitutional Court.

4.4 Finally, the State party underlines that the disputed properties did not stay in the State's hands but were surrendered to an entitled person in the restitution process as early as 1991. Hence, the author's sister became the owner of the properties as the original owner's legal successor satisfying all the conditions required by the law.

¹ Communication No. 787/1997; inadmissibility decision of 16 July 2001, para. 6.3.

Authors' comments

5.1 On 16 May 2007, the author commented on the State party's response. Regarding the argument that the submission of his communication amounts to an abuse of the right of submission, the applicant denies the existence of such abuse and recalls that there is no deadline for submitting a communication. He also makes reference to the fact that he is not a lawyer.

5.2 The author reiterates that the condition of citizenship in Act No. 87/1991 violates the Czech Constitution and article 26 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement, and that it is uncontested that domestic remedies have been exhausted.

6.3 The Committee notes also the State party's argument that the communication should be considered inadmissible as constituting an abuse of the right to submit communications under article 3 of the Optional Protocol, in view of the delay in submitting the communication to the Committee. The State party asserts that the authors waited three years and nine months after the decision of the European Court of Human Rights before submitting their complaint to the Committee. The Committee reiterates that the Optional Protocol does not establish any deadline for the submission of communications, and that the period of time elapsing before doing so, other than in exceptional cases, does not in itself constitute an abuse of the right to submit a communication. In the instant case, the Committee does not consider a delay of over three years since the decision of another procedure of international investigation or settlement as an abuse of the right of submission.² It therefore decides that the communication is admissible in as far as it appears to raise issues under article 26 of the Covenant.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The issue before the Committee is whether the application to the author of Act No. 87/1991 amounted to discrimination, in violation of article 26 of the Covenant. The Committee

² See Communication No. 1305/2004, *Victor Villamon Ventura v. Spain*, Views of 31 October 2006, para. 6.4, Communication No. 1101/2002, *Alba Cabriada v. Spain*, Views of 1 November 2004, para. 6.3.

reiterates its jurisprudence that not all differentiations in treatment can be deemed to be discriminatory under article 26. A differentiation which is compatible with the provisions of the Covenant and is based on objective and reasonable grounds does not amount to prohibited discrimination within the meaning of article 26.³

7.3 The Committee recalls its Views in the cases of *Adam*, *Blazek*, *Marik*, *Kriz*, *Gratzinger* and *Ondracka*⁴ where it held that article 26 had been violated. Taking into account that the State party itself is responsible for the departure of the author from the former Czechoslovakia to another country, where he eventually established permanent residence and obtained that country's citizenship, the Committee considers that it would be incompatible with the Covenant to require the authors to meet the condition of Czech citizenship for the restitution of their property or alternatively for its compensation.

7.4 The Committee considers that the principle established in the above cases also applies in the case of the author of the present communication, and that the application by the domestic courts of the citizenship requirement violated his rights under article 26 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 26 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including compensation if the properties cannot be returned. The Committee reiterates that the State party should review its legislation to ensure that all persons enjoy both equality before the law and equal protection of the law.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not, and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognised in the Covenant and to provide an effective and enforceable remedy in case that a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

³ See Communication No. 182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13;

⁴ Communication No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996, paragraph 12.6; Communication No. 857/1999, *Blazek v. Czech Republic*, Views adopted on 12 July 2001, paragraph 5.8; Communication No. 945/2000, *Marik v. Czech Republic*, Views adopted on 26 July 2005, paragraph 6.4; Communication No. 1054/2002, *Kriz v. Czech Republic*, Views adopted on 1 November 2005, paragraph 7.3; Communication 1463/2006, *Gratzinger v. Czech Republic*, Views adopted on 25 October 2007, paragraph 7.5; and Communication No. 1533/2006, *Ondracka v. Czech Republic*, Views adopted on 2 November 2007, paragraph 7.3.